

**State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of May 14, 2013**

Board Members Present

Gary R. Hatfield, M.D., Chairman
Maroulla Gleaton, M.D., Board Secretary
David R. Andrews, M.D.
Louisa Barnhart, M.D.
Cheryl Clukey
David H. Dumont, M.D.
Dana Dyer
David D. Jones, M.D.
David Nyberg, Ph.D.

Board Staff Present

Randal C. Manning, Executive Director
Mark C. Cooper, M.D., Medical Director
Dan Sprague, Assistant Executive Director
Tim Terranova, Consumer Assistant
Katherine Levesque, Investigator

Attorney General's Office Staff

Dennis Smith, Assistant Attorney General
Michael Miller, Assistant Attorney General

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

PUBLIC SESSIONS

9:02 a.m. – 9:04 a.m.
9:05 a.m. – 9:10 a.m.
10:13 a.m. – 10:25 a.m.
11:05 a.m. – 11:10 a.m.
12:15 p.m. – 1:07 p.m.
1:34 p.m. – 1:45 p.m.
1:54 p.m. – 2:00 p.m.
2:00 p.m. – 3:25 p.m.

PURPOSE

Call to Order
Public Session
Recess
Public Session
Public Session
Public Session
Recess
Public Session/Adjournment

EXECUTIVE SESSION

9:10 a.m. – 10:12 a.m.
10:26 a.m. – 11:04 a.m.
11:11 a.m. – 12:14 p.m.
1:08 p.m. – 1:33 p.m.
1:46 p.m. – 1:52 p.m.

Complaint
Complaints
Informal Conference
Complaint
Complaint

I. Call to Order

Dr. Hatfield called the meeting to order at 9:02 a.m.

A. Amendments to Agenda

1. CR 12-104
2. AD 13-82
- B. Scheduled Agenda Items
 - 11:00 a.m. Informal Conferences
 - a. CR12-153
 - b. CR12-221
 - 12:00 Noon MPHP Annual Report
 - 12:30 p.m. MMA Chronic Pain Project Report
 - 1:00 p.m. Adjudicatory Hearing CR13-10 Marshall J. Hubsher, M.D.

Executive Session

II. Complaints

1. CR12-236

Dr. Jones moved to unset the Adjudicatory Hearing. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

Dr. Barnhart moved to reinstate the Adjudicatory Hearing and offer an amended Consent Agreement. Dr. Dumont seconded the motion, which passed which passed 8-0-0-1 with Dr. Hatfield recused.
2. CR12-99

Dr. Barnhart moved to investigate further. Dr. Nyberg seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.
3. CR12-100

Dr. Barnhart moved to investigate further. Dr. Nyberg seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.
4. CR12-212

Dr. Andrews moved to dismiss. Dr. Jones seconded the motion, which passed unanimously.

MOTION: The complainant states that the first year resident physician prescribed an excessive dose of antibiotic to her child. The physician responds that he called the mother to apologize after being informed of his error by the pharmacist. However, the second prescription also had an error. The doctor acknowledges both errors in his prescribing, explains how they occurred, and accepts responsibility. The doctor describes practice changes that will prevent future dosing errors.

Dr. Andrews moved to issue a complaint (CR 13-87) against a separate physician involved in this complaint for incompetence. Dr. Jones seconded the motion, which passed unanimously.

5. CR13-48

Ms. Clukey moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

6. CR12-234

Dr. Dumont moved to dismiss. Dr. Jones seconded the motion, which passed unanimously.

MOTION: This case results from a report by law enforcement that a patient was obtaining opioids by deception and the physician did not detect this. The physician is a resident in a training program/practice that did not have access to the PMP and was not following Universal Precautions. The members of the practice now have access to the PMP and are using it as a matter of routine. In addition, the members of the practice have changed their prescribing practices and policies regarding controlled substance prescribing. All controlled substance prescriptions now require direct interaction between the attending physician and the patient. Based on the changes that have occurred no further action is required.

7. CR12-233

Dr. Dumont moved to investigate further. Dr. Andrews seconded the motion, which passed unanimously.

8. CR13-5

Dr. Barnhart moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

9. CR12-103

Dr. Jones moved to investigate further. Dr. Dumont seconded the motion, which passed unanimously.

10. CR13-25

Dr. Barnhart moved to dismiss. Dr. Nyberg seconded the motion, which passed unanimously.

MOTION: The patient complains about a change in prescription practice that required tapering off numerous medications. The patient did not agree with this change. The patient had tried numerous alternatives in the past and during the current period. The patient feels that life function has diminished without these medications. Examination of the charts revealed competent care. The patient was notified of the change well in advance and the available options were presented.

11. CR13-27

Dr. Gleaton moved to investigate further. Dr. Dumont seconded the motion, which passed unanimously.

12. CR13-30.

Dr. Dumont moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

13. CR13-32

Dr. Dumont moved to dismiss. Mr. Dyer seconded the motion, which passed unanimously.

MOTION: This complaint involves a family concern because the physician prescribed prednisone to a patient on warfarin who subsequently developed a gastrointestinal bleed. Chart review indicates the prednisone was prescribed for an exacerbation of respiratory disease and while this might affect blood levels of warfarin the physician ordered follow-up blood work to monitor this. This is a standard treatment and the patient was monitored in an appropriate fashion.

14. CR13-33

Dr. Jones moved to investigate further. Mr. Dyer seconded the motion, which passed unanimously.

15. CR13-46

Dr. Andrews moved to investigate further. Dr. Gleaton seconded the motion, which passed unanimously.

15a. CR12-104

The Board received an update regarding pending litigation and the status of a substance abuse evaluation previously ordered by the Board. Following the update the Board took the following action.

Dr. Barnhart moved that the physician either rejoin the MPHP and agree to abstain from alcohol use immediately, or undergo a substance abuse evaluation by 6/20/13. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Nyberg recused.

16. Letters of Guidance

- a. John J. Walsh Jr., M.D. Dr. Jones moved to accept the Letter of Guidance as written. Dr. Dumont seconded the motion, which passed unanimously.

III. Assessment & Direction

17. AD13-57

Dr. Jones moved to file. Dr. Dumont seconded the motion, which passed unanimously.

18. AD13-70

Dr. Nyberg moved to file. Dr. Gleaton seconded the motion, which passed unanimously.

19. AD13-82

Dr. Andrews moved to issue a complaint (CR13-86), summarily suspend the license of Robert K. Desai, M.D., and invite him to sign an interim consent agreement if he wishes to continue the hearing scheduled for June 11, 2013. Dr. Gleaton seconded the motion, which passed 8-0-0-1 with Dr. Jones recused. [See Attachment A]

20. Intentionally Left Blank

25. Complaint Status Report (FYI)

26. Consumer Assistant Feedback (FYI)

27. Physician Feedback (None)

IV. Informal Conference 11:00 a.m.

A. CR12-153

Dr. Hatfield moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

B. CR12-221

Dr. Andrews moved to investigate further. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Jones recused.

Public Session

V. Minutes of April 9, 2013

Dr. Jones moved to approve the minutes of April 9, 2013. Dr. Gleaton seconded the motion, which passed unanimously.

VI. Board Orders & Consent Agreement Monitoring and Approval

A. Board Orders (none)

B. Consent Agreement Monitoring and Approval

1. Alexandra M. Craig, M.D..

Dr. Barnhart moved to amend the consent agreement to allow Dr. Craig to work as a medical examiner. Dr. Gleaton seconded the motion, which passed unanimously.

2. CR12-63 Stephen H. Nightingale, M.D.

Dr. Nyberg moved to accept the consent agreement. Dr. Jones seconded the motion, which passed unanimously. [See Attachment B]

3. CR10-524 Alexandria Nesbit, P.A.-C (FYI)

This was a report regarding Ms. Nesbit's obligations while on vacation.

4. CR 08-254 Robert Baroody, M.D.

Dr. Nyberg moved to accept Dr. Hines as practice monitor with Dr. Lesko as back-up. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

VII. Adjudicatory Hearing(s) (1:00 p.m.)

A. CR13-10 Marshall J. Hubsher, M.D. (CONTINUED)

VIII. Remarks of Chairman

A. FSMB Annual Meeting Reports from Attendees (FYI)

IX. Executive Director's Monthly Report

The Board accepted the report of the Executive Director.

A. Complaint Status Report (FYI)

B. Policy Review: Temporary Licenses – Issued for Six Months

Dr. Nyberg moved to reaffirm the Board's policy regarding Temporary Licenses. Dr. Dumont seconded the motion, which passed unanimously.

X. Medical Director's Report (None)

XI. Remarks of Assistant Attorney General (None)

XII. Secretary's Report

A. List A

1. M.D. List A Licenses for Ratification

Dr. Jones moved to ratify Dr. Gleaton's approval of the Physicians M.D. List A. Ms. Clukey seconded the motion, which passed unanimously.

The following license applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservation.

<u>NAME</u>	<u>SPECIALTY</u>	<u>LOCATION</u>
Battelli, Chiara	Internal Medicine	Portland
Bauer, Leah K.	Psychiatry	Portland
Belisle, Adelle L.	Orthopedic Surgery	Portland
Bickford, Lincoln C.	Psychiatry	Lewiston
Coates, Anne C.	Pediatrics	Not Listed
Daly, William C.	Internal Medicine	Falmouth

Dixon, Leah K.	Psychiatry	Biddeford
Fallon, Timothy S.	Emergency Medicine	Portland
Fonesca Escudero, Amelia C.	Psychiatry	Not Listed
Frutiger, Elizabeth A.	Family Medicine	Portland
Gittinger, Elizabeth M.	Ob/Gyn	Portland
Hake, Steven E.	Diagnostic Radiology	Teleradiology
Herrle, Elizabeth L.	Internal Medicine	Portland
Howey, Jill L.	Pediatrics	Farmington
Jarvis, Wingrove T.	Orthopedics	Not Listed
Jean Gilles, Fritz E.	Internal Medicine	Not Listed
Kozlek Jr, Thomas F.	Otolaryngology	Augusta
Lakhanpal, Sanjiv	Thoracic Surgery	Not Listed
Lambert, David S.	Emergency Medicine	Bar Harbor
Larsen, Christopher P.	Pathology	Telemedicine
Lavigne, Kerry A.	Dermatology	Portland
London, Genevieve S.	Pediatrics	Norway
McLellan, Robert	Ob/Gyn	York
McLaughlin, Matthew M.	Physical Medicine & Rehab	Lewiston
Melendi, Misty D.	Pediatrics	Portland
Mirmow, Dwight P.	Pathology	Not Listed
Miskovsky, Emil P.	Internal Medicine	Lewiston
Morin, Melanie L.	Psychiatry	Waterville
Narayan, Sandeep	Anesthesiology	Bangor
Nelsen, Laura L.	Pathology	Augusta
O'grady Jr, Gerald P	Internal Medicine	Not Listed
Park, Susan Y.	Diagnostic Radiology	Teleradiology
Perrone, Jeanmarie	Emergency Medicine	Bar Harbor
Peter, Misha	Internal Medicine	Bangor
Ridings, Larry W.	Psychiatry	Telemedicine
Robaczewski, David L.	Surgery	Portland
Rudloe, Tiffany F.	Pediatrics	Ellsworth
Seshan, Thirumoorthi V.	Physical Medicine & Rehab	Not Listed
Shyдохub, Alexandar V.	Anesthesiology	Not Listed
Swartz, William L.	Anesthesiology	Portland
Teh, Yew-Xin	Internal Medicine	Bangor
Wagner, Andrew J.	Emergency Medicine	Not Listed
Walker, Patrick D.	Pathology	Telemedicine
Wallace, Charles W.	Family Medicine	Telemedicine
Wazzan, Tarek	Psychiatry & Neurology	Bangor
Witkosky, Michael E.	Radiology	Fort Kent

Yasar, Mukaddes

Internal Medicine

Bangor

2. P.A. List A Licenses for Ratification

Dr. Jones moved to ratify Dr. Gleaton's approval of the Physician Assistants on PA List A for licensure. Dr. Andrews seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservation.

<u>NAME</u>	<u>LICENSE</u>	<u>PSP</u>	<u>LOCATION</u>
Amanda Brooks, P.A.-C	Inactive	NONE	NONE
Robyn Brown, P.A.-C	Inactive	NONE	NONE
Timothy Brown, P.A.-C	Inactive	NONE	NONE
Rhonda Feldman, P.A.-C	Inactive	NONE	NONE
Melinda Ledbetter, P.A.-C	Inactive	NONE	NONE
Monika Szenk, P.A.-C	Active	Robert Clough, M.D.	Bangor
Michael Valentine, P.A.-C	Active	Konrad Barth, M.D.	Scarborough
Michael Wetzal, P.A.-C	Active	Robert Clough, M.D.	Bangor

B. List B Applications for Individual Consideration

1. Michael A. DiBari, M.D.

The Licensure Committee moved to grant the license. The motion passed unanimously.

2. Mark Detweiler, M.D.

Tabled

3. James A. Wichser, M.D.

Tabled

4. Jennifer A. Zeliger, M.D.

The Licensure Committee moved to grant the license. The motion passed unanimously.

The Licensure Committee instructed staff to write to the hospital about their requirements to report disciplinary actions.

C. List C Applications for Reinstatement

1. List C Applications for Reinstatement

Dr. Jones moved to ratify Dr. Gleaton's approval of the license reinstatement applications of the Physicians on List C. Dr. Andrews seconded the motion, which passed 8-0-0-1 Dr. Dumont recused.

The following license reinstatement applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservation:

<u>NAME</u>	<u>SPECIALTY</u>	<u>LOCATION</u>
Bayan, Nami	Internal Medicine	Lincoln
Rashid, Saima	Internal Medicine	Belfast

2. List C Applications for Reinstatement for Individual Consideration

a. Cesar O. Garcia, M.D.

The Licensure Committee moved to deny the application with leave to withdraw as it found no reason to reconsider its September 11, 2012 decision not to renew Dr. Garcia's license. The motion passed unanimously.

b. Kouta Ito, M.D.

The Licensure Committee moved to issue a temporary license for three months with the understanding that he will comply with the reintroduction plan laid out in his application or pass the SPEX exam before receiving a permanent license. The motion passed unanimously.

D. List D Withdrawals

1. List D (1) Withdraw License Application (None)

2. List D (2) Withdraw License from Registration

Dr. Dumont moved to approve the licensees on List D (2) to withdraw from registration. Dr. Jones seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NO.</u>
Meng, Aaron	MD18212
Fisk, Henry	MD9190
Porras, Mario	MD19271
Rogers, Claire	MD13587
Scutchfield, Scott	MD18635
Zamos, David	MD18589

3. List D (3) Withdraw License from Registration - Individual Consideration (None)

E. List E Licenses to lapse by operation of law

The following physician licenses lapsed by operation of law effective May 6, 2013.

<u>NAME</u>	<u>LICENSE NO.</u>
Ajine, Fadi	MD15958
Allegretta, Gary	MD12046
Bub, Lawrence	MD17707
Buski, Z. John	MD8010
Carnes, Timothy	MDV7294
Carrier, John	MD10750
Crosby, Douglas	MD18444
Greenleaf, David	MD10430
Johnson, Gaylen	MD6975
Killen, Ronald	MD18955
Koch, Paul	MD17712
Martin, M. Sheila	MD8510
Oberman, Lee	MD18921
Phillips, William	MD18546
Scholer, Aaron	MD15143
Schroder, John	MD6612
Shah, Manish	MD17737
Tener, Trilby	MD16754
Wildenhain, Yvonne	MD14085

- F. List F Licensees requesting to convert to active status (None)

- G. List G Renewal applications for review (None)

- H. List H. Physician Assistant Schedule II Authority Requests for Ratification

1. Dr. Jones moved to ratify Dr. Gleaton's approval of the following renewal requests for Schedule II prescribing authority. Dr. Andrews seconded the motion, which passed unanimously.

The following renewal requests for Schedule II prescribing authority have been approved by Board Secretary Maroulla Gleaton M.D.

NAME	PSP	LOCATION
John Bastin, P.A.-C	Scott Kemmerer, M.D.	Waterville
Gregg Christensen, P.A.-C	Darin Peck, M.D.	Greenville
Todd Chisholm, P.A.-C	Eve Wolinsky, M.D.	Fort Kent
Karissa Fahnestock, P.A.-C	Andrew Dionne, M.D.	Waterville
Edith Konesni, P.A.-C	Benjamin Mailloux, M.D.	Brooks
Shawn McMahon, P.A.-C	Brad Cushing, M.D.	Portland
Gretchen Preneta, P.A.-C	Tracey Weisberg, M.D.	Scarborough
Heather Renihan, P.A.-C	Paul Mailhot, M.D.	Lewiston
Anthony Simpson, P.A.-C	R. Reed Gramse, M.D.	Portland
Amy Williamson, P.A.-C	Lindsey Kerr, M.D.	Bangor

2. Applications for New Schedule II Authority

Dr. Jones moved to ratify Dr. Gleaton's approval of the following requests for Schedule II Authority. Mr. Dyer seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by Board Secretary Maroulla Gleaton, M.D.

NAME	PSP	LOCATION
Damon Jordan, P.A.-C	Konrad Barth, M.D.	Scarborough
Eric Semmell, P.A.-C	Joseph Castorina, M.D.	Augusta
Monika Szenk, P.A.-C	Robert Clough, M.D.	Bangor
Carol Talbot, P.A.-C	Mark Brann, M.D.	Scarborough
Leah Valliere, P.A.-C	Stephen Kirsch, M.D.	Westbrook
Michael Wetzel, P.A.-C	Robert Clough, M.D.	Bangor
Sarah Whitty, P.A.-C	Glenn Rampe, M.D.	Orono

XIII. Standing Committee Reports

A. Administration – Quarterly Financial Report

The quarterly financial report was reviewed.

A. Legislative & Regulatory Committee

Mr. Manning reviewed current legislation pertaining to the Board.

B. Public Information Committee (No report)

XIV. Board Correspondence (None)

XV. FYI (None)

XVI. FSMB Material (None)


XVII. Other Business

A. MPHP Annual Report (Noon)

B. MMA Chronic Pain Project (12:30 p.m.)

XVIII. Adjournment 3:25 p.m.

Respectfully submitted,



Timothy Terranova
Consumer Assistant

A

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:)
)
Robert K. Desai, M.D.) ORDER OF IMMEDIATE SUSPENSION
)
Complaint No. 13-86)

On May 14, 2013, the Maine Board of Licensure in Medicine ("the Board") met and reviewed materials submitted in connection with the above referenced complaint initiated against Robert K. Desai, license number MD15475 ("Dr. Desai"). On the basis of its review of these materials, the Board concludes that the continued ability of Dr. Desai to practice as a physician in the State of Maine constitutes an immediate jeopardy to the health and safety of the public who might receive his medical services, and that it is necessary to immediately suspend his license pending a hearing in order to adequately respond to this risk.

This suspension is issued pursuant to 5 M.R.S. § 10004(3). Dr. Desai's Maine medical license will be suspended effective immediately upon issuance of this Order for a thirty (30) day period ending on June 14, 2013, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which will be scheduled shortly. A formal notice of hearing will be transmitted, which will outline the issues and procedures for that hearing.

PRELIMINARY FINDINGS

Specifically, the Board preliminarily finds for purposes of this Order and pursuant to the materials submitted in the complaint process as follows:

1. On May 7, 2013, Dr. Desai was employed and scheduled to be on duty and was actively involved in patient care as a physician radiologist at Northern Maine Medical Center ("NMMC").
2. On May 7, 2013, at approximately 3:15 pm Dr. Desai was referred to the Emergency Department ("ED") at NMMC because the radiology department staff was very concerned about his cognition and unusual manner, lack of coordination, and slurred speech.
3. On May 7, 2013, at approximately 3:15 pm Dr. Desai underwent a history, physical examination, and blood work by the on-duty ED physician at NMMC, who diagnosed Dr. Desai with acute alcohol intoxication that was present while he was actively involved in patient care.
4. On May 7, 2013, while in the ED, Dr. Desai denied any use of substances until the lab results became available, at which point Dr. Desai only admitted drinking alcohol the previous evening. According to the lab results, Dr. Desai's blood alcohol content at 3:15 pm was 390 MG/DL, which is the equivalent to .39 grams per 100 milliliters of blood – almost five times the legal limit (.08) for being able to drive a motor vehicle – and indicative of tolerance to alcohol based upon chronic use.
5. On May 8, 2013, Dr. Desai telephoned the Board and spoke with the Board's Medical Director, Mark S. Cooper, M.D. During that conversation, Dr. Desai told Dr. Cooper that the

previous day; NMMC had sent Dr. Desai home due to concerns about his being under the influence of alcohol; Dr. Desai had patient responsibilities at the time he was sent home; Dr. Desai was involved in alcohol counseling; Dr. Desai was not involved in the medical professionals' health program (MPHP) but would be contacting them shortly.

6. On May 15, 2013, the Board staff contacted the MPHP and learned that Dr. Desai was not enrolled in that program.

For the purposes of this Order of Suspension and subject to holding the aforementioned full adjudicatory hearing on this matter to determine if any violations have actually occurred, the Board finds that the actions of Dr. Desai constitute immediate jeopardy of similar behavior occurring in the future and that delaying imposition of a suspension until holding a hearing would not adequately respond to this known risk. It is of great concern that Dr. Desai was at work at NMMC with a blood-alcohol level five times the legal limit established for driving a motor vehicle. The practice of medicine requires far more cognition and judgment than operating a motor vehicle. It is also of concern to the Board that Dr. Desai was not aware of his impaired condition and total lack of fitness to discharge his duties to patients at NMMC. Such a fundamental failure to meet the required priority of the public's safety creates a grave risk to patients. In addition, Dr. Desai's denial of consuming any alcohol until confronted with the laboratory results is indicative of a lack of honesty regarding this issue, and the high blood-alcohol level is indicative of tolerance caused by his chronic use of alcohol.

The above conduct constitutes violations of the following provisions applicable to Dr. Desai's license to practice as a physician in the State of Maine:

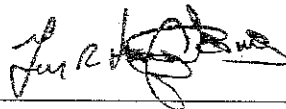
- A. 32 M.R.S. § 3282-A(2)(B) for habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health and safety of patients.
- B. 32 M.R.S. § 3282-A(2)(E)(1) by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.
- C. 32 M.R.S. § 3282-A(2)(H) by engaging in unprofessional conduct by violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine.

ORDER OF IMMEDIATE SUSPENSION

The Board ORDERS as follows:

1. Dr. Desai's license is suspended effective immediately upon issuance of this Order on May 15, 2013, for a thirty (30) day period ending on June 14, 2013, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which shall be scheduled shortly.
2. Dr. Desai may not practice medicine in the State of Maine during this suspension.
3. Dr. Desai must return his license and wallet card at once to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, ME 04333-0137.

Dated: May 15, 2013



GARY R. HATFIELD, MD, Chairperson

B

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Stephen H. Nightingale, M.D.)	AGREEMENT
Complaint No. CR12-63)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning the license to practice medicine in the State of Maine held by Stephen H. Nightingale, M.D. The parties to the Consent Agreement are: Stephen H. Nightingale, M.D. ("Dr. Nightingale"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Dr. Nightingale has held a license to practice medicine in the State of Maine since September 28, 1992. Dr. Nightingale specializes in Internal Medicine and Pediatrics in both of which he is Board Certified.

2. In October 2002, Dr. Nightingale founded the Coastal Skin Center, which specializes in cosmetic dermatology and is a division of Coastal Health Center. According to Coastal Skin Center's website, the staff of the center includes Dr. Nightingale and a medical assistant/medical aesthetician/laser technician. According to Dr. Nightingale, the staff also includes a registered nurse (RN) and a licensed practical nurse (LPN), though they are not listed on the website.

3. On or about April 26, 2012, the Board received a complaint from Patient A against Dr. Nightingale. Patient A alleged that he went to Coastal Skin Center seeking laser hair removal. Patient A alleged that he met with a technician at Coastal Skin Center, who failed to inform him that laser treatment would be ineffective on persons with blonde or light hair. According to Patient A, he underwent several months of laser treatment by the technician without any measurable results. Patient A subsequently learned that laser treatment to remove hair is ineffective for persons with blonde or light hair, and sent an email to Coastal Skin Center requesting a refund of monies paid for the ineffectual treatment. According to Patient A, he received an email response from Coastal Skin Center that included the following:

Our billing policy also clearly states that no refunds are given once treatment has started. Hair removal does not work on people who have blonde or white hair and that is one of the reasons that we have a consultation visit as patients are informed of this at the consultation. The laser hair removal works best on dark hair.

As a result, patient A alleged that Coastal Skin Center was aware that its laser treatment to remove his hair would be completely ineffective because it is obvious that he has blonde/light hair. Patient A felt this was particularly egregious because his laser treatments spanned several months during which time he was never told that his blonde/light hair would make laser hair removal ineffective. The Board docketed the complaint as Complaint No. CR12-63 and sent it to Dr. Nightingale for a response.

4. On June 1, 2012, the Board received a written response from Dr. Nightingale to Complaint No. CR12-63. In his response, Dr. Nightingale

explained that Coastal Skin Center's clinic uses laser technology to remove hair. Dr. Nightingale explained the medical and technological basis for laser hair removal. Dr. Nightingale explained that prior to receiving laser hair removal treatment, Patient A filled out "a patient information questionnaire and health history," which included a Fitzpatrick skin type. According to Dr. Nightingale, Patient A's answers on the questionnaire and health history indicated that he had a "type 3+ bordering on type 4," which showed the presence of "fairly significant pigmentation." Dr. Nightingale stated that his "medical technician determined that there was adequate pigmentation in [Patient A's] hair and felt that treatment was warranted." At no point in his response did Dr. Nightingale indicate that he had seen or evaluated Patient A prior to his treatment. Dr. Nightingale indicated that "based on the examination and the recollection of the technician as well as the Fitzpatrick skin type indexing that was completed by the patient, [the patient] was appropriate for laser hair removal." Dr. Nightingale provided a copy of Patient A's record of treatments at Coastal Skin Center, including "informed consent and informed consent treatment logs." According to Dr. Nightingale, "We... try to guide patients based on our experience as to which modality would be most effective for them" and that it was not their policy to deceive patients.

5. On June 8, 2012, the Board received a reply from Patient A to Dr. Nightingale's response. In his reply, Patient A provided the Board with a copy of the email that he sent to Coastal Skin Center on April 21, 2012, and Coastal Skin Center's response to his email on April 23, 2012, which corroborated his

claim that he had attempted to resolve this matter with them prior to filing his complaint with the Board. Patient A also noted that his patient chart did not contain a "physical examination form" prior to his treatment, and reasserted that Coastal Skin Center performed "a medical procedure they knew would be ineffective."

6. On September 11, 2012, the Board reviewed the foregoing information and voted to further investigate the matter by sending Dr. Nightingale a letter requesting additional information, including a specific explanation of his informed consent process to include a detailed description of what occurs at the patient's first visit.

7. On October 22, 2012, the Board received a response from Dr. Nightingale to its request for additional information. In his response, Dr. Nightingale described the general consent form signed by patients at Coastal Skin Center, which the patient is directed to read in its entirety. According to Dr. Nightingale, "very few people read this consent." Dr. Nightingale explained the informed consent process as follows:

The patient is asked to read and sign the consent when they check in. [The medical assistant] brings them back to the room. She often asks how they did following their last session, unless this is the first treatment. She explains what she will be doing and will answer any questions that the patient may have. They will ask her if the laser hurts, etc. She inspects the area to be treated, then applies a clear gel to the skin. Protective goggles/glasses are put on, the treatment settings are made and the procedure begins. Afterwards, the client is cleaned off and any further questions are answered. They then check out with the receptionist and schedule the next session as indicated. Once the client/patient is at this point, he/she has had a formal consultation.

8. On November 13, 2012, the Board reviewed Complaint CR12-63, and voted to invite Dr. Nightingale to attend an informal conference to discuss the following issues:

- a. Whether or not Patient A met the criteria for treatment;
- b. The informed consent process;
- c. Medical record documentation; and
- d. Whether the technician made independent diagnostic and treatment decisions.

9. On February 12, 2013, the Board held an informal conference with Dr. Nightingale regarding the issues it identified regarding Complaint No. CR12-63. Following the informal conference, the Board voted to schedule the matter for an adjudicatory hearing. In addition, it authorized its assigned legal counsel to negotiate a consent agreement to resolve Complaint No. CR12-63 without further proceedings.

10. This Consent Agreement has been negotiated by counsel for Dr. Nightingale and counsel for the Board in order to resolve complaint CR12-63 without an adjudicatory hearing. Absent Dr. Nightingale's acceptance of this Consent Agreement by signing and dating it in front of a notary and returning it to the Board on or before April 23, 2013, the matter will proceed to an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it, the matter will proceed to an adjudicatory hearing.

11. By signing this Consent Agreement, Dr. Nightingale and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board for possible ratification. Dr. Nightingale and his legal counsel also forever waive any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Nightingale agrees to the following:

12. Dr. Nightingale admits that with regard to complaint CR12-63 the Board has sufficient evidence from which it could reasonably conclude that: (a) Laser hair removal was one of a number of "dermatologic services" provided by "Coastal Skin Center", a division of Coastal Health Center, of which Dr. Nightingale was listed as "staff" and identified as "board certified in both Internal Medicine and Pediatrics with a special interest in cosmetic dermatology;" (b) Dr. Nightingale did not conduct an initial consultation or examination of Patient A before his medical assistant performed laser hair removal treatment on Patient A; (c) Dr. Nightingale did not obtain adequate informed consent from Patient A prior to his medical assistant performing laser hair removal treatment on Patient A; and (d) Dr. Nightingale did not create and maintain an adequate medical record for Patient A. Dr. Nightingale admits that the Board could conclude that such conduct constitutes

unprofessional conduct and grounds for discipline of his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(F).

13. For the conduct described in paragraphs 1-10 above, Dr. Nightingale agrees to accept, and the Board agrees to issue, the following discipline:

a. A WARNING. Dr. Nightingale agrees that he cannot delegate to a medical assistant the ability to perform medical consultations, examinations or to obtain informed consents to medical treatment. Dr. Nightingale shall take all measures necessary to ensure that such conduct does not again occur.

b. A LICENSE PROBATION for One (1) year following the execution of this Consent Agreement with the condition that within sixty (60) days following the execution of this Consent Agreement he provide the Board with documentary proof to the satisfaction of the Board that:

- (i) He is performing a consultation with and/or an examination of all patients who undergo any "dermatologic services" provided at Coastal Skin Center, which is a division of Coastal Health Center;
- (ii) He is obtaining adequate informed consent from all patients who undergo any "dermatologic services" provided at Coastal Skin Center; and

(iii) He is creating and maintaining adequate patient records for all patients who undergo any "dermatologic services" provided at Coastal Skin Center.

In complying with this condition, Dr. Nightingale shall provide the Board with:

- (i) A letter explaining the changes he has made to his practice to conform to the requirements identified above;
- (ii) A copy of his new office policy implementing the requirements identified above; and
- (iii) Copies of five redacted patient records demonstrating that the requirements identified above are being met.

14. In the event that Dr. Nightingale satisfies all of the conditions of his probation, he may request that the Board terminate his probation early. The Board shall retain the sole discretion to grant or deny any such request without hearing or judicial review.

15. Dr. Nightingale waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Nightingale agrees that this Consent Agreement is a final order resolving Complaint CR12-63. This Consent Agreement is not appealable and can only be amended or rescinded in writing by all of the parties hereto.

16. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Nightingale or any other matter relating to this Consent Agreement.

17. Dr. Nightingale acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for the Board to take additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking his license.

18. This Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

19. This Consent Agreement constitutes disciplinary action that is reportable to the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).

20. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

21. The Board and Dr. Nightingale agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above in the event that allegations are brought against Dr. Nightingale in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Nightingale's license.

22. Dr. Nightingale acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

23. Dr. Nightingale has been represented by Elizabeth A. Olivier, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

24. For the purposes of this Consent Agreement, the term "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, STEPHEN H. NIGHTINGALE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 4/22/13 Stephen H. Nightingale
STATE OF Maine STEPHEN H. NIGHTINGALE, M.D.

_____, S.S.

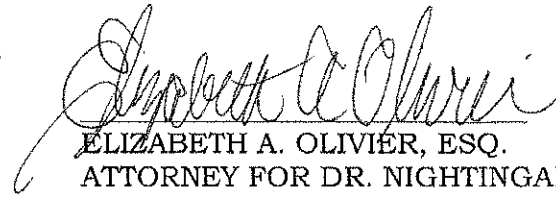
Personally appeared before me the above-named Stephen H. Nightingale, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 4-22-13 Pamela J. Cushing
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: PAMELA JEAN CUSHING
NOTARY PUBLIC
State of Maine
My Commission Expires
November 14, 2014

DATED:

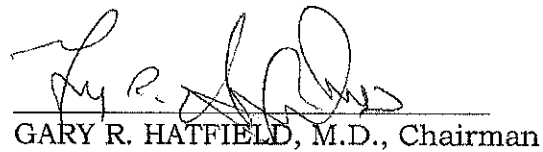
April 23, 2013


ELIZABETH A. OLIVIER, ESQ.
ATTORNEY FOR DR. NIGHTINGALE

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

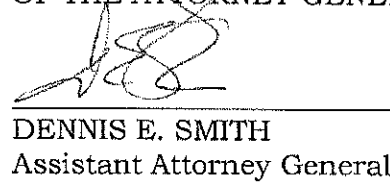
5/14/13


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

5/14/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 5/14/13